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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1118

CHUGACH NATIVE ASSOCIATION AND
CHUGACH NATIVES, INC.,
Petitioners

v.

CENTRAL COUNCIL OF THE TLINGIT & HAIDA INDIANS
OF ALASKA AND SEALASKA CORPORATION,
Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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MEMORANDUM OPPOSING CERTIORARI

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WILSON - EPES PRINTING CO., INC. - RE 7-6002 - WASHINGTON, D. C. 20001

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Virtually from the time of organization of respondent Sealaska Corporation in June 1972, and continuously thereafter until the filing of this suit on May 1, 1973, respondents were engaged in endeavors to get petitioners, first to negotiate, and later to arbitrate, the boundary between their respective regions.

Section 7(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (the Act), 85 Stat. 688, 691-692 (43 U.S.C. 1606(a)) in pertinent part provides:

> Any dispute over the boundaries of a region or regions shall be resolved by a board of arbitrators consisting of one person selected by each of the Native associations involved, and an additional one or two persons, whichever is needed to make an odd number of arbitrators, such additional person or persons to be selected by the arbitrators selected by the Native associations involved.

Respondents' position is that, historically and contemporaneously, the coast of the Gulf of Alaska from approximately Yakutat to the mouth of the Copper River is the territory of the Tlingit Indians (represented by respondents) and should be included in their region. On December 11, 1972, the Secretary set a boundary between respondents' and petitioners' regions on the 141st meridian and advised respondents by letter:

> In case there is objection and the dispute goes to arbitration, the boundary may be set by such arbitration. Unless the arbitration establishes a boundary change within 90 days from the receipt of this letter, the boundary contained in the enclosed description and map will be used by this Department in its administration of the Alaska Native Claims Settlement Act of 1971.

This boundary being unsatisfactory to respondents, on January 24 and April 9, 1973, they served formal demands for arbitration upon petitioners. These demands having evoked no response, respondents instituted this suit on May 1, 1973.

On petitioners' motion it was dismissed on December 4, 1973 by the district court (reconsideration denied January 31, 1974), on the ground that it was barred by laches.

On September 5, 1974, the Court of Appeals for the Ninth Circuit reversed. Assuming, as petitioners contended, that the Secretary intended by his letter of December 11, 1973, to prescribe a period of limitations for arbitration under section 7(a) binding on the regional corporations *inter sese*, rather than simply informing that after 90 days he would use the boundary described in his letter for administrative purposes, the court of appeals held that he acted beyond any authority derivable from the Act. It held further that respondents had not been guilty of laches and that the Secretary was not a necessary party to a suit between Native organizations to establish their boundaries by arbitration in accordance with section 7(a) of the Act.

All of the issues petitioners would raise here were fully presented and considered, and fairly decided, below. Section 7(a) of the Act granted the Native peoples of Alaska, through their regional associations and corporations, the right to arbitrate regional boundary disputes between themselves. This coincides with the Congressional policy, expressed in section 2 of the Act and its legislative history, of self-determination for Alaska Natives. Nowhere in the Act or in the legislative history is it suggested that the Secretary is possessed of authority to curtail this important right. Yet the petitioners argued below that the Secretary intended to do just that by his December 11, 1972 letter and that this letter should be accorded great weight as a contemporaneous administrative "interpretation" of the statute. The court of appeals correctly concluded that the Act reserved the settlement of boundary disputes to the Natives themselves by a provision too clear to admit of administrative "interpretation." Such right might be cut off by laches, but not by administrative fiat.[1]

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[1] Assuming, with petitioners (Pet. 6-7), that, if the respondents' region were to be enlarged as a result of arbitration, it would

This conclusion was reached not only by the appellate court but apparently by the trial court as well, since the latter based its decision, not on the Secretary's authority to administratively curtail the right of arbitration granted by the statute, but upon a finding that the respondents were barred by laches. In their petition for certiorari petitioners fail to address the laches issue, although they urged it as a major point in both lower courts. The appellate court correctly held that the undisputed facts surrounding respondent's attempts to arbitrate the boundary dispute refute the charge of laches.

In this suit to compel arbitration under section 7(a) of a disputed boundary, a right bestowed on the Native people alone, there was no need or reason to join the Secretary as a party, nor does he have standing in the arbitration proceedings now going forward pursuant to

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no longer be permissible for the Secretary to use his boundary of December 11, 1972 as fixative of the size of the southeastern region for the purpose of administering the allocation formula in section 12(c), and that such an enlargement would necessitate recomputation of the entitlements of the several regional corporations, it is clear that the resultant changes would be inconsequential. As the amount of land to be allocated thereunder is 16 million acres, and as Alaska comprises more than 375 million acres, increasing the area of the southeastern region (which comprises about 27 million acres as bounded by the Secretary) by as many as 500,000 acres would change the overall results of applying the formula hardly at all. In any event, as petitioners acknowledge, theirs is the only region that could possibly be adversely affected by an increase in the size of respondents' region. All of the other regions eligible to receive land under section 12(c) would have their entitlements very slightly increased, and the quantities of land presently withdrawn in each of these regions in aid of their rights under section 12(c) are substantially in excess of the quantities that would be required to satisfy such increased rights. Apart from the cultural significance of the area in dispute to the Tlingit Indians, the importance to respondents of having included in their region all of their traditional lands is that it enhances the area wherein they may exercise their rights to receive lands under section 14(h) of the Act.

the mandate of the court of appeals. This is clearly shown by section 7(a) of the Act and is in accord with the Congressional purpose to depart from the paternalism which often characterized past legislation affecting Native Americans.

This is a unique and isolated case. It arises under a special provision of the Act that applied only to the twelve Alaska Native regional corporations, the office of which provision, but for this case, has now been completely executed. Although at one time seven of the twelve regional corporations were involved in disputes over boundaries, these have all since been settled apparently beyond the possibility of litigation, and the dispute existing between the parties hereto is the only one of the kind outstanding. In the unlikely event that any other regional corporation presently were to attempt to found litigation on the arbitration provision of section 7(a), it would almost certainly be held barred by laches under the standards expounded in the opinion of the court of appeals.

Pursuant to the district court's order of December 10, 1974, the parties hereto are presently proceeding with arbitration. When this arbitration is completed, all the regional boundaries within the State of Alaska provided for by section 7(a) will have been finally determined and the arbitration provision will be a dead letter.

The case does not warrant review by this Court and a writ of certiorari should be denied.

Respectfully submitted,

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